

Decision \_\_\_\_\_

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation of Pacific Gas and Electric Company (U 39 M) to (1) Issue, Sell and Deliver Common Stock and One or More Series of Its First and Refunding Mortgage Bonds, Debentures, Subordinated Deferrable Interest Debentures, Promissory Notes and/or Other Evidences of Indebtedness in Connection with A Confirmed Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, the Total Aggregate Principal Amount of Such Issuances and Guarantees Not to Exceed \$9.5 Billion; (2) Enter into One or More Interest Rate Caps, Collars and Swaps; (3) an Exemption from the Competitive Bidding Rule.

I.02-07-015  
(Filed July 17, 2002)

**ORDER AUTHORIZING PACIFIC GAS & ELECTRIC COMPANY  
FINANCING AUTHORITY AS MAY BE REQUIRED TO IMPLEMENT  
A CONFIRMED PLAN OF REORGANIZATION**

**I. Summary**

This decision conditionally authorizes Pacific Gas and Electric Company (PG&E) to issue up to \$9.5 billion of additional preferred stock and long-term debt,<sup>1</sup> to implement the California Public Utilities Commission's and the Official Committee of Unsecured Creditors' First Amended Plan of Reorganization proposed by the Commission and the Official Committee of Unsecured Creditors (Amended Plan) as amended, modified or supplemented from time to time.

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<sup>1</sup> Long-term debt is any debt that has a maturity of 12 months or more when issued.

PG&E's financing authority is conditioned upon the confirmation of the Amended Plan in PG&E's Chapter 11 proceeding now pending in the United States Bankruptcy Court for the Northern District of California (Case No. 01-30923 DM.) We find that this financing authority is issued for a lawful purpose, as delineated in § Pub. Util. Code.<sup>2</sup> The Commission's current financial consultant, UBS Warburg, LLC<sup>3</sup>, under the direction of the General Counsel's Office, the Director of the Energy Division and with the assistance of staff and another Commission consultant, Chanin Capital Partners, LLC, (the Financing Team) is authorized to negotiate the sale and placement of such preferred stock and long-term debt in order to implement the Amended Plan.

## **II. Background**

On July 17, 2002, the Commission opened Order Instituting Investigation (I). 02-07-015 for the purposes of authorizing and directing PG&E to issue such preferred stock and long-term debt instruments as deemed appropriate to finance the Commission's proposed Plan of Reorganization (POR), assuming the POR is confirmed by the Bankruptcy Court. The Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that a hearing is not necessary.

On April 6, 2001, PG&E voluntarily filed a petition for relief under Chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the Northern District of California (the "Court".) Effective February 27, 2002, the Court terminated PG&E's exclusive right to file a plan under Section 1121 of the

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<sup>2</sup> All citations herein are to the California Public Utilities Code unless otherwise specified.

<sup>3</sup> UBS Warburg, LLC is a consultant to the Official Committee of Unsecured Creditors and, by virtue of the Amended Plan being a joint plan of the Commission and the Official Committee of Unsecured Creditors, for the purposes of this decision is a consultant to the Commission as well.

Bankruptcy Code to permit the Commission to file an alternate plan of reorganization for PG&E by April 15, 2002. On April 15, 2002, the Commission filed its Plan of Reorganization. for PG&E (as amended, modified or supplemented from time to time, the “Commission’s Plan.”) <sup>4</sup>

On June 25, 2002, the Commission filed a motion before the Bankruptcy Court to request payment by PG&E’s estate of all amounts payable to UBS Warburg LLC, as arranger of the financing required under the Commission’s Plan. On August 30, 2002, the Commission and the Creditors Committee filed the Amended Plan with the Bankruptcy Court.

The Amended Plan contains several specifically enumerated changes, among them the following: First, Class 3 First and Refunding Mortgage Bonds will no longer be reinstated. This increases the new long-term debt by approximately \$2.699 billion. Second, the Amended Plan now proposes to issue \$1.750 billion<sup>5</sup> in preferred stock in place of the common stock issuance

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<sup>4</sup>Among other terms, i.e. the April 6, 2002 Commission Plan contemplated: (i) payment in full in Cash of Allowed Administrative Expense Claims, Professional Compensation and Reimbursement Claims, Priority Tax Claims, Other Priority Claims, QUIDS Claims, General Unsecured Claims, California Independent System Operator (ISO), California Power Exchange (PX) and Generator Claims, Energy Service Provider (ESP) Claims, Convenience Claims and MBIA Claims, including pre-petition and Post-Petition Interest (except on Administrative Expense Claims and Professional Compensation and Reimbursement Claims); (ii) payment in full in Cash or reinstatement of Other Secured Claims, including interest to the extent permitted; (iii) reinstatement of Secured Claims Relating to First and Refunding Mortgage Bonds, Mortgage Backed Pollution Control (PC) Bond Claims, MBIA Insured PC Bond Claims, Letter of Credit Backed PC Bond Claims, Treasury PC Bond Claims, and payment in full in Cash of accrued and unpaid pre-petition and Post-Petition Interest thereon; (iv) satisfaction in the ordinary course of business of Environmental, Fire Suppression, Pending Litigation, Tort and FERC License Claims and Workers’ Compensation Claims; (v) treatment of Letter of Credit Bank Claims in accordance with a previously reached agreement between the holders of such Claims and PG&E; (vi) preservation of Preferred Stock Equity Interests; and (vii) preservation of Common Stock Equity Interests, subject to dilution. Capitalized terms used herein but not defined shall have the meaning specified in the Commission’s Plan.

<sup>5</sup> Final determination of the amounts of debt or preferred stock actually issued to effectuate the Amended Plan may change due to prevailing market conditions.

contemplated originally. Finally, there is a change in the treatment of Class 6 ISO, PX and Generator claims. There is an agreement to pay interest on these claims in consideration for withdrawal of objections to the Commission's Original Plan. Confirmation of the Amended Plan is an essential condition precedent to the authority granted in this decision.<sup>6</sup>

**A. Use of Proceeds to Finance the Plan of Reorganization**

Pursuant to §§ 816 et seq. of the Public Utilities Code, the Commission conditionally authorizes PG&E to issue up to \$9.5 billion of additional preferred stock and long-term debt if the Bankruptcy Court confirms the Commission's Amended Plan.

This conditional authority is for an amount in excess of the projected financing requirements of the Amended Plan, and is only to be exercised for the minimum amounts necessary to implement the confirmed Plan. Specifically, this decision conditionally authorizes the issuance of up to \$9.5 billion in proceeds from the sale or issuance of preferred stock in addition to the amount already outstanding; and (2) various types of long-term debt securities as described in this decision. At the time of filing its Original Plan, the Commission estimated that it would be necessary to issue common stock sufficient to yield approximately \$1.75 billion and approximately \$3.9 billion in long-term debt. The Amended Plan now contemplates up to \$1.75 billion in preferred stock and approximately \$6.599 billion in long-term debt, which amounts themselves are subject to adjustment as matters develop.

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<sup>6</sup> Copies of the Amended Plan and PG&E's Plan can be found on the web site of the Bankruptcy Court:

<http://www.canb.uscourts.gov/canb/Documents.nsf/4fa6cc9d77741519882569e50004dce6/5af0e0251bff3de888256a400073f921?OpenDocument>.

The issuance of long-term debt by a public utility is subject to §§ 817 and 818, which state, in relevant part:

**§ 817:** A public utility may issue . . . bonds, notes, and other evidence of indebtedness payable at periods of more than 12 months after the date thereof for any of the following purposes and no other:

- (a) Acquisition of property.
- (b) Construction, completion, extension, or improvement of its facilities.
- (c) Improvement or maintenance of its service.
- (d) Discharge or lawful refunding of its obligations.
- (e) Financing the acquisition and installation of electrical and plumbing appliances and agricultural equipment which are sold by other than a public utility, for use within the service area of the public utility.
- (f) Reorganization or readjustment of its indebtedness or capitalization upon a merger, consolidation, or other reorganization.
- (g) Retirement of or in exchange for one or more outstanding stocks or stock certificates or other evidence of interest or ownership of such public utility, or bonds, notes, or other evidence of indebtedness of such public utility, with or without the payment of cash.
- (h) Reimbursement of moneys expended from income or from any other money in the treasury of the public utility not secured by or obtained from the issue of stocks or stock certificates or other evidence of interest or ownership, or bonds, notes, or other evidences of indebtedness of the public utility, for any of the aforesaid purposes except maintenance of service and replacements, in cases where the applicant has kept its accounts and vouchers for such expenditures in such manner as to enable the commission to ascertain the amount of money so expended and the purposes for which such expenditure was made.

**§ 818:** No public utility may issue . . . bonds, notes, or other evidences of indebtedness payable at periods of more than 12 months after the date thereof unless . . . it shall first have secured from the commission an order authorizing the issue, stating the amount thereof and the purposes to which the issue or the proceeds thereof are to be applied, and that, in the opinion of the commission, the money, property, or labor to be procured or paid for by the issue is reasonably required for the purposes specified in

the order, and that, except as otherwise permitted in the order . . . such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income.

We find that there is a demonstrated and reasonable need to issue preferred stock and long-term debt to finance the Amended Plan, because, upon confirmation of the Bankruptcy Court, this Plan will allow PG&E to emerge from Chapter 11. Thus, this need is an appropriate and lawful use under § 817(d), (f) and (g).<sup>7</sup> Accordingly, we direct the Financing Team to negotiate the sale and placement of the required stock and debt, and conditionally authorize PG&E, as described in this decision, to issue the necessary securities under the Commission's authority pursuant to § 818, contingent on confirmation of the Amended Plan by the Court.

PG&E's authorization to issue preferred stock and long-term debt shall expire upon the determination that sufficient funds have been obtained to fully fund the Amended Plan. This authority is not "ever-greened,"<sup>8</sup> and in the future PG&E must file for appropriate authority to issue securities when preferred stock is redeemed or debt issued as a result of this decision has matured.

The proportion of debt to equity capital determines financial risk.<sup>9</sup> The higher the debt-to-equity ratio, or leverage, the greater the financial risk and cost of debt. Table 1 below shows that with the issuance of \$3.9 billion of additional long-term debt and \$1.75 billion of preferred stock for § 817 purposes, PG&E

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<sup>7</sup> Previous Commission decisions authorizing PG&E to issue stock and/or long-term debt typically authorized PG&E to use the proceeds for one or more of the purposes identified in § 817. (See, for example, D.95-09-023, 1995 Cal. PUC LEXIS 694, \*35; D.93-06-082, 1993 Cal. PUC LEXIS 339, \*28; D.93-06-083, 1993 Cal. PUC LEXIS 340, \*16; D.88-04-063, Cal. PUC LEXIS 418, \*38; and D.87-12-002, Cal. PUC LEXIS 47, \*28).

<sup>8</sup> Ever-greening refers to the ability of PG&E to issue debt without receiving further Commission authority for the purpose of refunding previously authorized debt that has matured and the principal is due to creditors.

<sup>9</sup> D.00-06-040, *mimeo.*, p. 10.

would have a capital structure with a different debt-to-equity ratio than we found prudent in D.00-06-040. Many things have changed since that time, including PG&E's voluntary petition under Chapter 11. In Application (A.) 02-05-022, PG&E has applied for a new cost of capital and related capital structure to be recovered in retail rates charged to its customers for electric and natural gas service. It is reasonable to defer to that proceeding the authorization of an appropriate capital structure for ratemaking purposes for PG&E in calendar year 2003. If the Amended Plan is confirmed, we authorize PG&E to comply with the capital structure that will result from implementation of the Plan until such later date when the Commission can adopt an updated long-term capital structure suitable for the economic business conditions faced by PG&E in the regulated retail California energy markets, as determined in A.02-05-022.

<b>Table 1</b>		
	Capital Structure Authorized by D.00-06-040 *	Pro Forma Capital Structure in Amended Plan (\$1.5 Billion new Preferred Stock)
Long-Term Debt	46.20%	47.13%
Preferred Stock	5.80%	13.58%
Common Equity	48.00%	39.29%
Total	100.00%	100.00%

\* D.00-06-040, OP 1

## **B. Types of Long-Term Debt**

We authorize the Financing Team to negotiate the sale and placement of a variety of debt instruments in an aggregate amount not to exceed \$9.5 billion of

additional long-term debt, reduced by the amount of any new preferred stock. The exact terms and conditions of each debt instrument will be determined by market conditions at the time the debt is issued. We do not expect use of every authorized debt instrument. Rather, the Financing Team will use only those it judges as offering the lowest cost of capital at the time.

The specific long-term debt instruments that may be used are as follows:

(1) bonds secured by a mortgage on PG&E's assets; (2) unsecured or subordinated debentures and notes ("notes"); (3) notes with warrants; (4) loans obtained directly from banks, insurance companies or other financial institutions; (5) letters of credit.

We authorize the negotiation, sale and placement, and conditionally authorize PG&E to issue, any of the previously identified types of long-term debt to provide financing for the Amended Plan as confirmed by the Bankruptcy Court. We authorize a broad range of options, consistent with previous decisions in order to give the widest possible range of options to avoid unforeseen problems with more narrowly limited authority. The Financing Team may confer with PG&E and its own advisors but they are in no way constrained to adopt any recommendation they judge not to be in the best long-term interests of PG&E and its ratepayers.

### **C. Common Equity and Common Stock**

Common equity for PG&E is the total of all paid in capital and cumulative retained earnings. The Commission's Original Plan included the provision for the issuance of new common stock by PG&E. The Plan envisioned the proceeds to be approximately \$1.75 billion, which were to be used in conjunction with long-term debt authorized by this decision to provide the cash necessary fund



the Commission's Original Plan. The Commission no longer contemplates authorizing common stock as a part of the Amended Plan.

#### **D. Preferred Stock**

Preferred stock is a specialized security that has preference for payment of a dividend at a stated interest rate. This right has a "preference" ahead of shareholders' rights to payment of common stock dividends and after the rights to interest payments to holders of long-term debt instruments such as those discussed elsewhere in this decision. Unpaid preferred stock dividends accumulate and must be paid before common stock dividends may be paid. Common stock dividends do not accumulate and are dependent upon residual after-tax net income and the satisfaction of other creditors.

Preferred stock is a useful tool when either conventional debt or more common equity may not be feasible or is too expensive due to market conditions and the entity's business risks. Preferred stock may have enhanced features to attract investors. These features may include (1) convertibility; if dividends are in arrears a trigger may convert the preferred stock to common equity. Or, (2) a predetermined schedule of amortization and retirement; so that investors are not dependent upon reselling their preferred stock in the market in order to recover their original invested capital.

PG&E has outstanding preferred stock. Its holders are parties in interest in the Chapter 11 proceeding. The Amended Plan contemplates issuing approximately up to \$1.75 billion of a new series of preferred stock in place of new common equity as proposed in the Original Plan. It is possible that investors may value its added security ahead of a potentially higher return for common stock. Under cost of service ratemaking, the stated interest of preferred stock is recoverable in regulated retail rates. Its cost is usually higher than the

market cost of debt and less than the expected return on equity. We grant PG&E authority to issue new series of preferred stock structured as deemed appropriate for current market conditions by the Finance Team. The aggregate amount of new preferred stock and new long-term debt, as discussed herein, shall not exceed \$9.5 billion.

#### **E. Interest-rate Swaps, Caps, and Collars**

The Commission has previously granted requests for authority under § 701<sup>10</sup> to enter into interest-rate swaps, caps, and collars for long-term debt.<sup>11</sup> We have granted requests that the Commission exclude interest-rate swaps from the determination of the amount of debt authorization used. Finally, we have previously granted an exemption from the restriction imposed in D.93-06-082 that limits interest-rate swaps to 20% of PG&E's total outstanding long-term debt.

We order that in connection with the Amended Plan, PG&E may, with authority under § 701, enter into interest-rate swaps, caps, and collars for long-term debt pursuant to this decision.<sup>12</sup> PG&E shall comply with all record keeping and reporting requirements pertaining to these financial instruments as were adopted by the Commission in D.93-06-082.

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<sup>10</sup> Section 701 states that “[t]he commission may supervise and regulate every public utility in the State and may do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction.”

<sup>11</sup> There are two types of interest-rate swaps. The first type is where fixed-rate debt is converted into variable-rate debt or vice versa. The second type is where floating-rate debt tied to one index (e.g., the London Interbank Offering Rate) is converted into floating-rate debt tied to another index (e.g., the Federal Reserve composite rate for commercial paper). An interest-rate cap is a financial instrument that sets a maximum rate of interest on variable-rate debt. An interest rate collar is a financial instrument that sets both minimum and maximum rates of interest on variable-rate debt.

<sup>12</sup> The Commission granted similar authority in D.95-09-023, D.93-06-082, D.92-06-031, and D.88-04-063.

The interest-rate swaps, caps, and collars, if negotiated by the Financing Team to finance the Amended Plan, may subsequently be used for ratemaking purposes. Similarly, the interest-rate swaps, caps, and collars associated with debt issued for the Amended Plan purposes may be used for ratemaking purposes.

We also grant PG&E authority to exclude interest-rate swaps from the determination of the amount of debt authorization used.<sup>13</sup> Finally, we grant authority for an exemption from the restriction adopted in D.93-06-082 that limits swaps to 20% of outstanding long-term debt. PG&E may exceed the 20% limit for interest-rate swaps until this issue is revisited in either a subsequent proceeding for authority to issue securities or a cost of capital proceeding.

#### **F. Amortizing Debt**

Utilities typically do not amortize long-term debt principal; more typically the principal is payable in full at maturity. New debt is then issued at prevailing market rates. An option that may be perceived as providing enhanced security to the lender would be to provide for the amortization of the principal over the life of the security. This could be either a fixed repayment of principal plus interest or a fixed payment of both interest and principal amortizing the balance to zero.

Enhanced security should directly lead to a lower interest rate. Consistent with the Commission's goal to finance PG&E's emergence from bankruptcy at the lowest cost to the ratepayers, amortizing debt should be utilized if the professional judgment of the Finance Team determines that ratepayers would benefit by having some portion of the needed new debt issued with an

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<sup>13</sup> The Commission granted similar requests in D.96-03-015, D.95-09-023, D.93-06-082, D.92-06-031, D.91-12-021, and D.90-12-094. Any debt issued by PG&E as part of a transaction involving an interest-rate swap shall be used to determine the amount of debt authorization used.

amortization feature. The principal repayment feature will increase the demands for cash because PG&E will have to currently service not only the interest but also the principal. There is a trade-off between lowest financing cost and lowest demand for cash. The Finance Team must also determine that the Amended Plan will provide adequate cash flow to PG&E to sustain an amortization feature.

#### **G. Exemption from Competitive Bidding Rules**

Utilities are typically required to issue debt in accordance with the competitive bidding procedures set forth in D.38614, D.49941, D.75556, D.81908, and Resolution F-616 (collectively, “the Competitive Bidding Rules”). On previous applications the Commission has ordered that the following types of debt be exempt from the Competitive Bidding Rules:

- Debt offerings of \$300 million or more.
- Medium-term notes marketed through a group of dealers.
- Loans and letters of credit obtained from banks, insurance companies, or other financial institutions.

The Commission is cognizant that that these types of debt may not be obtained on favorable terms by using the Competitive Bidding Rules.

The Commission on occasion also has granted an exemption for (1) interest-rate swaps, caps, and collars, and (2) debt securities issued in connection with swaps, caps, or collars. The Commission has found that interest-rate swaps, caps, and collars are opportunistic transactions that are not always available at an economic cost. Thus, we conclude that these transactions – if undertaken in connection with this Decision – must be exempt from the Competitive Bidding Rules so that the Financing Team may respond quickly to take advantage of an opportunity. Similarly, the Commission’s consultants must be positioned to quickly negotiate the issue and placement of debt securities in connection with

interest-rate swaps, caps, or collars if doing is expected to lower PG&E's cost of capital. The Commission has previously accepted that the timing and terms of the debt security must match the swap, cap, or collar, and that one transaction cannot proceed without the other.

Finally, we order an exemption from the Competitive Bidding Rules for all securities authorized by this decision (including preferred stock) to permit the maximum flexibility: (a) to accelerate, postpone or cancel the scheduled date and time for receipt of bids; (b) to reject all bids submitted; (c) to request the resubmission of bids; (d) to reschedule subsequent receipt of bids; (e) to vary the amount, terms and conditions of the debt securities submitted for bids; and (f) to allow all of the foregoing to be done without newspaper publication. We believe that the foregoing procedures will provide us with the ability to take best advantage of market opportunities. Moreover, an exemption from the Competitive Bidding Rule normally requires a utility to provide prospective bidders with notice of changed terms at least one day in advance. We believe that the Finance Team may be able to obtain better terms if it can adjust the terms of an offering up to the last moment

We order the previously described exemptions from the Competitive Bidding Rules ("exemptions").<sup>14</sup> We do so based on our belief that granting the exemptions will enable us to obtain long-term debt and preferred stock in a manner advantageous to PG&E and its ratepayers.

#### **H. Reporting Requirements**

General Order (GO) 24-B requires utilities to submit a monthly report to the Commission that contains, among other things, the following information:

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<sup>14</sup> The Commission granted similar exemptions in the following decisions: D.95-09-023, D.93-06-082, D.92-06-031, D.91-12-021, D.90-12-094, D.88-04-063, and D.87-12-002.

(1) the amount of debt issued by the utility during the previous month; (2) the total amount of debt outstanding at the end of the prior month; (3) the purposes for which the utility expended the proceeds realized from issuance of debt during the prior month; and (4) a monthly statement of the separate bank account that the utility is required to maintain for all receipts and disbursements of money obtained from the issuance of debt.

In order to keep the Commission fully informed, PG&E shall report to the Commission all the information required by GO 24-B for any debt issued by PG&E pursuant to this decision. We order that PG&E report on a quarterly basis the information required by GO 24-B for Medium Term Notes (MTNs), interest-rate swaps, and letters of credit.

### **III. Pub. Util. Code Section 1904(b)**

Whenever the Commission authorizes a utility to issue debt, the Commission is required to charge and collect a fee in accordance with § 1904(b), which provides:

For a certificate authorizing an issue of bonds, notes, or other evidences of indebtedness, two dollars (\$2) for each one thousand dollars (\$1,000) of the face value of the authorized issue or fraction thereof up to one million dollars (\$1,000,000), one dollar (\$1) for each one thousand dollars (\$1,000) over one million dollars (\$1,000,000) and up to ten million dollars (\$10,000,000), and fifty cents (\$0.50) for each one thousand dollars (\$1,000) over ten million dollars (\$10,000,000), with a minimum fee in any case of fifty dollars (\$50). No fee need be paid on such portion of any such issue as may be used to guarantee, take over, refund, discharge, or retire any stock, bond, note or other evidence of indebtedness on which a fee has theretofore been paid to the commission. If the commission modified the amount of the issue requested in any case and the applicant thereupon elects not to avail itself of the commission's authorization, no fee shall be paid, and if such fee is paid prior to the issuance of such certificate by the commission, such fee shall be returned.

This decision conditionally authorizes PG&E to issue up to \$9.5 billion in preferred stock and long-term debt. Therefore, pursuant to § 1904(b), PG&E shall remit the approximate fees to the Commission's Fiscal Office no later than 60 days after the issuance of the securities.

**A. Comments on Draft Decision**

A draft decision was attached to I.02-07-015 and we requested Comments on that draft. Only PG&E filed comments. No other party filed a Reply to PG&E. PG&E made the following five assertions. That:

“ordering PG&E to issue debt and equity on terms to be determined by the Commission's Financing Team, the DD (draft decision) exceeds the Commission's authority in the following respects: (1) The DD violates California corporate law. (2) The Legislature has not authorized the Commission to order a utility to issue common stock and/or debt. (3) The DD is premature. (4) The DD violates due process because it represents a prejudgment by the Commission of the issues presented by the DD prior to any opportunity for a hearing or development of a record by the Commission. (5) Ordering PG&E to pay commission fees for issuing securities is barred by the Bankruptcy Code.” <sup>15</sup>

With respect to the first three issues the Commission disagrees; in fact the authority granted in this decision is specifically required by the Public Utilities Code to allow PG&E to issue the necessary securities to finance a Bankruptcy Court approved plan of reorganization. The Officers and Board of Directors are bound to implement such an approved plan. There are no restrictions on the Commission's power to authorize issuance of these securities nor is specific legislation required. Nor is this decision premature; once a bankruptcy decision is in place PG&E needs this authority to remain in compliance with the Public Utilities Code, promptly issue the necessary securities, and resume its normal

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<sup>15</sup> Page 3, “Pacific Gas and Electric Company's Comments on Draft Decision.” dated August 15, 2002.

operations as a regulated electrical corporation subject to the jurisdiction of this Commission. However, we emphasize that this conditional order authorizes PG&E to issue the necessary securities consistent with our Amended Plan only upon order of the Bankruptcy Court.

The OII does not violate due process. PG&E and all other parties on an extremely broad Temporary Service List were provided with an opportunity to file comments. Further, I.02-07-015 directed any party who believes that evidentiary hearing are required to serve a motion identifying the specific item for which hearing is sought, including a description of the material issues of disputed fact, the evidence the party proposes to introduce and what the moving party would seek to demonstrate through hearing. No such motion was filed. Therefore, the record is composed of all filed and served comments. The Commission has consistently held that this procedure provides parties with notice and the opportunity to be heard.

Finally, the Commission determined that the fee mandated under § 1904(b) is mandatory and not discretionary. Such a fee only increases the costs to ratepayers and would not be imposed if it were discretionary to the Commission.

We have modified the order as a result of our changes to our Amended Plan. Thus, as a courtesy, we give parties an additional opportunity to comment on the revised decision. To ensure that the Commission is able to act in a timely manner, we hereby shorten the comment period and require parties to submit comments on this modified decision by November 4, 2002. No reply comments will be accepted.

### **Assignment of Proceeding**

This matter is assigned to Commissioner Peevey, and the examiner is Clanon.



**Findings of Fact**

1. The Commission has modified its Original Plan and is now sponsoring the Amended Plan of Reorganization jointly with the Official Unsecured Creditors' Committee.

2. The Commission's Plan currently requires up to \$9.5 billion or less in new long-term debt and in proceeds from the sale of new preferred stock.

3. We find that there is a demonstrated and reasonable need to issue preferred stock and long-term debt to finance the Commission's Amended Plan, because, upon confirmation of the Bankruptcy Court, this Plan will allow PG&E to emerge from Chapter 11. Thus, this need is an appropriate and lawful use under § 817(d), (f) and (g).

4. Capital structure consists of long-term debt, preferred stock, and common equity. D.00-06-040 authorized the following capital structure for PG&E: (i) 46.2% long-term debt, (ii) 5.8% preferred stock, and (iii) 48.0% common equity.

5. The issuance of additional long-term debt and preferred stock for § 817 purposes would change the proportion of long-term debt in PG&E's capital structure to 47.13%, which is higher than the 46.2% authorized by D.00-06-040.

6. The higher the debt-to-equity ratio, the greater the financial risk. Authorizing PG&E to issue up to \$2 billion of additional preferred stock and \$7.5 billion in additional long-term debt, as presently estimated in the Amended Plan but in excess of the expected need, would increase PG&E's debt-to-equity ratio and financial risk.

7. The General Counsel's Office and Director of the Energy Division and staff, in conjunction with UBS Warburg, LLC, and Chanin Capital Partners, LLC (the Financing Team) have authority to identify and arrange appropriate financing for the Amended Plan.

8. PG&E needs authority to issue the following debt instruments for the purpose of financing the Amended Plan if the Plan is confirmed, and other § 817 purposes: (i) bonds secured by a mortgage on PG&E's assets; (ii) notes and warrants; (iii) loans from banks, insurance companies, and other financial institutions; (iv) letters of credit. The Commission previously granted similar authority for debt in D.96-03-015 and D.95-09-023.

9. PG&E needs authority to issue preferred stock for the purpose of financing the Amended Plan if the Plan is confirmed.

10. The proposed financing of the Amended Plan needs the flexibility derived from authority under § 701 to arrange financing that would have PG&E enter into interest-rate swaps, caps, and collars for long-term debt issued pursuant to this decision. The Commission granted PG&E similar authority in D.95-09-023, D.93-06-082, D.92-06-031, and D.88-04-063.

11. In D.93-06-082, the Commission adopted record keeping and reporting requirements pertaining to interest-rate swaps, caps, and collars.

12. PG&E should have authority to exclude interest-rate swaps from the determination of the amount of debt authorization used. The Commission granted PG&E similar requests in D.96-03-015, D.95-09-023, D.93-06-082, D.92-06-031, D.91-12-021, and D.90-12-094.

13. In D.93-06-082, the Commission restricted interest-rate swaps to 20% of PG&E's outstanding long-term debt.

14. Amortizing debt instruments may enhance creditors' security and thereby lower financing costs.

15. Amortizing debt may increase the demand for cash on PG&E as it emerges from bankruptcy.

16. Granting the Finance Team discretion to use amortizing debt, provided the company has adequate cash flow, may lead to lower costs.

17. Utilities are usually required to issue debt in accordance with the Competitive Bidding Rules set forth in D.38614, as amended by D.49941, D.75556, D.81908, and Resolution F-616.

18. PG&E has previously been granted an exemption from GO 24-B so that it can submit on a quarterly basis the information required by GO 24-B for (i) medium-term securities, and (ii) interest-rate swaps, caps, and collars. The Commission granted PG&E such exemptions in one or more of the following decisions: D.95-09-023, D.93-06-082, D.92-06-031, D.91-12-021, D.90-12-094, D.88-04-063, and D.87-12-002.

19. The Financing Team needs the flexibility of several exemptions from the Competitive Bidding Rules. The exemptions are identified in the body of this decision. The Commission has previously granted applicants similar exemptions in D.95-09-023, D.93-06-082, D.92-06-031, D.91-12-021, D.90-12-094, D.88-04-063, and D.87-12-002.

20. Granting the proposed exemptions from the Competitive Bidding Rules may help the Commission obtain debt on terms that are favorable to PG&E and its ratepayers.

### **Conclusions of Law**

1. An evidentiary hearing is not necessary.
2. Pursuant to §§ 817(c), 818, and 701, the Commission may authorize PG&E to execute certain financial transactions and issue long-term debt and other securities to finance the Amended Plan, if it is confirmed.
3. Implementing the Amended Plan requires authority for the Financing Team to negotiate the sale, and for PG&E to issue, up to \$9.5 billion of additional

preferred stock and long-term debt. This authority should expire after the Plan has been fully funded by, among other sources, proceeds from these securities.

4. PG&E currently needs \$9.5 billion or less for § 817 (d) (f) and (g) purposes to fund the confirmed Amended Plan, consisting of an estimated need of at least \$6.599 billion of additional long-term debt and \$1.75 billion in new preferred stock. This new debt and preferred stock would increase the proportion of long-term debt in PG&E's capital structure beyond that authorized by D.00-06-040.

5. In Application A.02-05-022, PG&E has applied for a new cost of capital and related capital structure to be recovered in retail rates charged to its customers for electric and natural gas service. We will defer to that proceeding the authorization of an appropriate capital structure for ratemaking purposes for PG&E in calendar year 2003, PG&E is authorized to comply with the capital structure that will result from the implementation of the Amended Plan until such later date when the Commission issues an order in A.02-05-022.

6. PG&E should be authorized to issue up to \$9.5 billion in new preferred stock and additional long-term debt for any of the purposes listed in § 817. This authority should expire when the Amended Plan has been funded.

7. PG&E should use any accrued interest derived from the issuance of long-term debt authorized by this decision to finance the Amended Plan.

8. The following exemptions or allowances are reasonable, consistent with Commission precedent, and should be granted:

- a. Flexibility to issue any or all of the types of long-term debt identified in the body of this decision.
- b. The need for authority under § 701 to enter into interest-rate swaps, caps, and collars for long-term debt issued pursuant to this decision.

- c. For PG&E to exclude interest-rate swaps from the determination of the amount of debt authorization used.
- d. To exempt interest-rate swaps used to finance the Amended Plan from the restriction adopted in D.93-06-082 that limits interest-rate swaps to 20% of PG&E's outstanding long-term debt.
- e. To allow amortizing debt provided there is adequate cash flow and a reduction in the cost of debt.
- f. The need for the exemptions from the Competitive Bidding Rules described in the body of this decision.

9. Section 701.5 prohibits a utility from issuing debt or pledging its credit for or on behalf of an affiliate. Section 701.5(a) authorizes the Commission to grant exemptions from § 701.5 if (i) the affiliate's revenues and expenses are used by the Commission to set rates, and (ii) the Commission finds that the proposed financing will benefit the utility and its ratepayers.

10. Any interest-rate swaps, caps, or collars used pursuant to the authority granted by this decision should be used for ratemaking purposes only if the swap, cap, or collar provides demonstrable benefits to ratepayers.

11. PG&E should comply with the record keeping and reporting requirements pertaining to interest-rate swaps, caps, and collars that were adopted by the Commission in D.93-06-082.

12. PG&E should report to the Commission all the information required by GO 24-B for any debt issued by PG&E pursuant to this decision.

13. Except as specified in the following COL, PG&E should be authorized to report on a quarterly basis the information required by GO 24-B for Medium Term Notes, interest-rate swaps, and letters of credit.

14. Energy Division Staff should have authority to require PG&E to submit on a monthly basis the information required by GO 24-B.

15. PG&E is required by § 1904(b) to pay the appropriate fees for authority to issue additional preferred stock and long-term debt.

16. The following order should be effective immediately so that its provisions may be implemented expeditiously.

## **O R D E R**

### **IT IS ORDERED** that:

1. Pursuant to Pub. Util. Code § 816 et seq., the Commission's General Counsel, Director of the Energy Division, staff, UBS Warburg LLC and Chanin Capital Partners, LLC, are authorized to negotiate for the issuance and placement by Pacific Gas and Electric Company (PG&E) of up to \$9.5 billion of additional preferred stock and long-term debt to finance the California Public Utilities Commission's and the Official Committee of Unsecured Creditors' First Amended Plan of Reorganization for PG&E to resolve PG&E's Chapter 11 proceeding currently pending in the United States Bankruptcy Court for the Northern District of California.

2. PG&E may use the proceeds authorized by Ordering Paragraph (OP) 1 only to fund Amended Plan, which is an allowable purpose under § 817 ("§ 817 purposes").

3. The authority granted to PG&E by OPs 1 and 2 shall be exercised to fund the Amended Plan only if the Bankruptcy Court confirms it.

4. Pursuant to Pub. Util. Code §§ 816 et seq. and § 701, PG&E is conditionally authorized to issue the types of long-term debt and preferred stock negotiated and/or placed by the Financing Team pursuant to OP 1. This authority is

conditioned on, and will become effective, only upon confirmation of the Amended Plan by the Bankruptcy Court.

5. Pursuant to Pub. Util. Code § 701, PG&E is authorized to enter into interest-rate swaps, caps, and collars for debt issued pursuant to this decision. PG&E shall comply with all record keeping and reporting requirements pertaining to these financial instruments that were adopted by the Commission in Decision (D.) 93-06-082. The interest-rate swaps authorized herein shall not be considered as additional debt for the purpose of determining the amount of long-term debt issued by PG&E.

6. The interest-rate swaps, caps, and collars used by to finance the Amended Plan may be used for ratemaking purposes. Similarly, the interest-rate swaps, caps, and collars associated with long-term debt issued by PG&E for § 817 purposes may be used for ratemaking.

7. Exemptions are granted from the Commission's Competitive Bidding Rules as described in the body of this decision.

8. PG&E shall report to the Commission all of the information required by General Order (GO) 24-B for any debt issued by PG&E pursuant to this decision. PG&E may report this information on a quarterly basis, unless directed by Commission staff to submit some or all of the information required by GO 24-B on a monthly basis.

9. Pursuant to Pub. Util. Code § 1904(b), PG&E shall pay an appropriate fee to the Commission's Fiscal Office no later than 60 days after the issuance of securities implementing the Commission's Plan.

This order is effective today.

Dated \_\_\_\_\_, 2002, at San Francisco, California.